

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

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|-------------------------------|---|----------------------------|
| BRYAN D. WHEAT, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. 13-CV-641-CVE-FHM |
| |) | |
| CAROLYN COLVIN, Acting |) | |
| Commissioner, Social Security |) | |
| Administration, |) | |
| |) | |
| Defendant. |) | |

OPINION AND ORDER

The Motion for Relief Pursuant to Fed. R. Civ. P. 60(b)(6) filed by Plaintiff's counsel, [Dkt. 26], is before the court for decision. The Commissioner's brief asserts that the Commissioner declines to assert a position. [Dkt. 27].

In *McGraw v. Barnhart*, 450 F.3d 493, 496 (10th Cir. 2006), the Court ruled that attorney fees are awardable under 42 U.S.C. § 406(b)(1) when the Social Security Administration awards disability benefits to a claimant following a remand from the federal court. In such a circumstance the authority of Fed. R. Civ. P. 60(b)(6) is employed to allow counsel to seek fees under §406(b)(1) long after the usual fourteen days allotted by Fed. R. Civ. P. 54(d)(2)(B)(i) for filing a motion for attorney fees has expired. *McGraw*, 450 F.3d at 505.

The court remanded this case to the Commissioner for further administrative action, pursuant to sentence four of 42 U.S.C. § 406(g). The Commissioner issued a fully favorable decision. Counsel's motion for relief under Rule 60(b)(6) was filed less than a month after the issuance of the decision. Counsel represents that, as of the date of filing the instant motion, the Notice of Award containing the amount of past due benefits has not

been received. Consequently, the amount of the contingent attorney fee cannot be ascertained. Counsel requests an order allowing the filing of the motion for 406(b) fees within sixty days of receipt of the Notice of Award.

The court finds that the instant motion was filed within a reasonable time of the decision awarding benefits and that the request for sixty days from receipt of the Notice of Award in which to file a motion for fees under §406(b) is reasonable.

The Motion for Relief pursuant to Fed. R. Civ. P. 60(b)(6) is GRANTED, as follows: a motion for an attorney fee award under §406(b), together with the required notice to Plaintiff and statement concerning any objection thereto, may be filed within 60 days of the Notice of Award.

SO ORDERED this 28th day of August, 2015.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE